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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 1613 of 2004.
Date of Decision : January 09, 2007

Daya Nand

... Appellant

Versus

State of Haryana and another.

.. Respondents

CORAM : Hon`ble Mr. Justice Pritam Pal.

Present : Shri Rakesh Nagpal, Advocate,
for the appellant.

Shri Ajay Chaudhary, DAG, Haryana,
for the respondents.

PRITAM PAL, J.

This appeal by plaintiff, who is working as a Conductor in the Haryana Roadways, is directed against the judgment and decree dated 14.6.2002 passed by learned Additional Civil Judge (Senior Division), Sirsa and judgment and decree dated 4.12.2003 passed by learned District Judge, Sirsa, whereby, the suit for declaration to the effect that he (plaintiff-appellant) (hereinafter referred to as "the appellant") is entitled for good annual confidential reports for the years 1991-92 and 1992-1993 and further declaring the impugned order dated 3.9.2001 passed by the Transport Commissioner, Haryana, rejecting his appeal for up-gradation of

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his aforesaid ACRs, was dismissed. Further the first appeal filed by the appellant was also dismissed.

In nutshell, the grievance of the appellant is that he was given adverse remarks regarding his work and conduct for the years 1991-92 and 1992-93, but those remarks were not conveyed to him. Ultimately, after coming to know his adverse remarks, he made an appeal before the Transport Commissioner, Haryana and the same was rejected without passing any speaking order. Moreover, the representation made by the appellant against the aforesaid adverse remarks was not decided within a period of three month as per the Government instructions. On these contentions, the appellant has prayed for setting-aside the impugned judgment and decrees passed by the courts below.

On the other hand, learned State counsel has repelled the aforesaid points of arguments raised on behalf of the appellant and prayed for dismissal of this appeal.

Before proceeding further, it would be pertinent to reproduce paragraph 10 of the judgment passed by learned District Judge, wherein, the above contentions raised by learned counsel for the appellant had fallen to the ground :-

> "10. I have given due weight to the submissions of both sides. No doubt, as per instructions of the Govt. dated 2.3.1971, as are available in the booklet of Haryana Government "Guidelines Regarding Procedure in Disciplinary Cases, Seventh Edition, Law and Legislative Department", a final order on the representation should be conveyed to the Govt. employee concerned as far as possible within three months. However, the person who seeks equity must observe equity. It has been stated by

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Shri Meet Singh, Clerk DW1, that the adverse remarks for the year 1991-92 were conveyed to the plaintiff vide letter dated 19.10.1992 and the adverse remarks for the year 1992-93 vide letter dated 24.9.1993. However, the plaintiff did not make any representation against the adverse remarks immediately on their receipt. The plaintiff rather woke up from his slumber in the year 2000 after a period of about 7 years. Ex.P3 is a copy of the letter dated 3.9.2001 vide which the Joint State Transport Controller, Haryana, Chandigarh informed the plaintiff that his representation against the adverse remarks was rejected by the Commissioner, Transport, vide order dated 8.6.2001. From the perusal of Ex. P3 it is revealed that the plaintiff had made representation against the adverse remarks on 20.7.2000. When the adverse remarks had been conveyed to the plaintiff on 19.10.1992 and 24.9.1993, it is not understandable as to what for the plaintiff waited for a period of seven years or more than 7 years to make the representation. A person making representation after a period of seven years cannot say that his representation was not decided within a period of three months as per instructions of the Govt. Moreover, the instructions of the Govt. cannot take place of law and, therefore, even if there was slight violation thereof, it cannot be said that the adverse remarks have to be expunged automatically on account of violations of the instructions."

It is further apparent on the file that the representation filed by the appellant was rejected by the Commissioner, vide order dated 8.6.2001 and he was informed in that respect vide letter (Ex. P3), dated 3.9.2001. The said main order, dated 8.6.2001, vide which his representation was rejected has also not been brought on the file and as such, the courts below

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have rightly come to the conclusion that in the absence of said order, it could not be observed whether that order was speaking one or not. Apart from that, it is also pertinent to mention here that the appellant was also found to have committed embezzlement in respect of government funds. After an enquiry, his increment was also stopped. It is also an admitted fact that he never challenged the said order of stoppage of his annual grade increment. As observed by the courts below, the representation against the adverse remarks was made by the appellant, after a lapse of seven years and he failed to explain the said inordinate delay.

In view of the above discussion and keeping in view the concurrent findings of the courts below on all the material points, I find that no substantial question of law is involved in this appeal and the same is hereby dismissed.

[PRITAM PAL]
JUDGE

Jan. 09 , 2007
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